

Appl. No. 10/782,806
In re Van Der Meulen, J.
Reply to Office Action of July 12, 2006

REMARKS/ARGUMENTS

The Examiner is thanked for the Official Action dated July 12, 2006. The Examiner is also thanked for the interview of October 11, 2002. This request for reconsideration is intended to be fully responsive thereto.

Claims 1 and 8 were rejected under 35 U.S.C. §102(b) as being anticipated by Kuijpers et al. (USP 3,595,119). The applicant respectfully disagrees.

The Examiner erroneously interprets the tuning openings 11-15 of Kuijpers as open cavities in the bodies of xylophone like sound producing units 1-5. While recognizing that the pending claims must be given their broadest interpretation, we trust that that the broadest interpretation of the claims must also be reasonable, consistent with the specification and consistent with the interpretation that those skilled in the art would reach, as stated in MPEP § 2111.

As clearly disclosed in the present application, each of the open cavities 14, 24 and 34 within the bodies 12, 22 and 32, respectively, defines a volume V of the open cavity within the pitch clave block 10, 20 or 30. In the preferred exemplary embodiment of the present invention, each of the open cavities 14, 24 and 34 is in the form of a substantially trapezoidal polyhedron characterized by dimensions m, n, k and h, which define the volume V of the open cavity. Thus, contrary to the Examiner's allegations, those skilled in the art would not possibly interpret the

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tuning openings 11-15 of Kuijpers as “cavities” having a volume. The Supervisory Primary Examiner (SPE) Mr. Donovan, present at the interview of October 11, 2006, confirmed Applicant’s position.

Moreover, the resonators 6 of Kuijpers have all of the same the same structural size (see column 1, lines 6-10 and 48-51). As clearly disclosed by Kuijpers, the xylophonelike sound producing unit thereof comprises a plurality of hollow resonator members having tone chambers of substantially the same size (see column 3, lines 1-4). Therefore, Kuijpers fails to disclose a set of clave blocks comprising rigid bodies having substantially equal exterior dimensions and different volumes of open cavities therewithin. As for the tuning openings 11-15 of Kuijpers, using the analogy proposed by Mr. Donovan, SPE, present at the interview of October 11, 2006, the volume of the room would not change whether the door (or window for that matter), which is an opening in the room, is open or closed.

Also, claim 1 of the present application recites that the different volumes of the open cavities are provided to generate musical tones of a variety of pitches. At the same time, in Kuijpers, the musical pitch of the resonator is attained by means of the construction of the corresponding sound plate and the application of the tuning openings designed differently in adaptation to the sound plate (see column 2, lines 63-66 and column 3, lines 5-13).

Furthermore, the Examiner's position is that, giving the claims the broadest reasonable interpretation, Kuijpers’ teaching does read on the claims of the instant application. However, claim 1 of the present application clearly recites “a set of clave blocks”, while Kuijpers teaches a

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xylophone-like sound producing unit including a set of resonator assemblies 1-5. Both clave blocks and xylophones are well known in the art. Clearly, one of ordinary skill in the musical art would not interpret the xylophone-like unit as the clave block.

Thus, Kuijpers fails to disclose a set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Therefore, the applied document, *i.e.*, the '119 patent to Kuijpers, does not meet the standard of anticipation.

Claims 8 introduces additional limitation further defining the present invention over Kuijpers.

Claims 2 and 3 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kuijpers. The applicant respectfully disagrees.

As argued above regarding patentability of claim 1, Kuijpers fails to disclose the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Claims 2 and 3 introduce additional limitations further defining the present invention over Kuijpers.

Moreover, MPEP § 2143.01 requires that there must be some suggestion or motivation, either in the prior art references or in the knowledge generally available to one of ordinary skill in the art, to modify or combine teachings of the prior art. However, the Examiner fails to prove as

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to why one having ordinary skill in the art would have found the claimed invention to be obvious in light of the teachings of the prior art. More specifically, Kuijpers lacks any suggestion or motivation to limit the number of resonator assemblies of the xylophone-like sound producing unit to three.

Therefore, the rejection of claims 2 and 3 under 35 U.S.C. 103(a) over Kuijpers is improper.

Claims 4-6 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kuijpers in view of Cohen et al. (USP 4,898,061). The applicant respectfully disagrees.

As argued above regarding patentability of claim 1, Kuijpers fails to disclose the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Thus, even if the combination of and modification of Kuijpers and Cohen suggested by the Examiner could be made, the resulting musical instrument still would lack the set of clave blocks having equal exterior dimensions and different volumes so as to generate different musical tones. Claims 4-6 introduce additional limitations further defining the present invention over Kuijpers in view of Cohen.

Therefore, the rejection of claims 4-6 under 35 U.S.C. 103(a) is improper.

Claim 7 was rejected under 35 U.S.C. 103(a) as being unpatentable over Kuijpers in view of Shimoda et al. (4,779,507). The applicant respectfully disagrees.

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As argued above regarding patentability of claim 1, Kuijpers fails to disclose the set of clave blocks having substantially equal exterior dimensions and different volumes of the open cavities therewithin so as to generate different musical tones. Claim 7 introduces additional limitation further defining the present invention over Kuijpers. Specifically, Kuijpers fails to disclose the set of clave blocks including the bodies of different volumes having different thickness of the solid material. The resonators 6 of Kuijpers have all of the same the same structural size (see column 1, lines 6-10 and 48-51). As disclosed and clearly shown in Figs. 1-4 of Kuijpers, the resonators 6 have not only the same length and width, but also the same volumes of the cavity within the resonators (see column 3, lines 1-4), thus the same thickness.

The Examiner concedes that the xylophone Kuijpers lacks the bodies of different volumes having different thickness of the solid material. The examiner then cites Shimoda which, allegedly, teaches a percussive musical instrument such as a wood block, including three plates (21, 22 and 13) of different volumes having different thickness of the solid material, wherein when the plates are struck musical tones of different pitches are generated (cols. 2-3, lines 62-45). This rejection appears to have no merit, as claim 7 recites a set of clave blocks having different volumes of the open cavities therewithin, while Shimoda discloses a single wood block. Moreover, the Examiner compares the volumes of the cavities within the different clave blocks with the volumes of the solid material of the three plates (21, 22 and 13) of the single wood block.

Furhtermore, contrary to the Examiner's allegations, it would not have been obvious to

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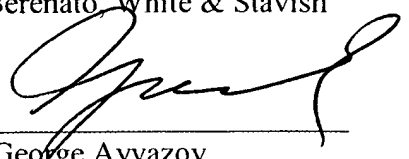
one having ordinary skill in the art at the time the invention was made to incorporate the teaching of Shimoda (disclosing the single wood block) into the invention of Kuijpers (disclosing the xylophone like sound producing units) in order to provide a cost-effective mechanism for making a plurality of clave blocks. In fact, the teachings of Kuijpers and Shimoda cannot be combined as they disclose very different musical instruments, namely the xylophone and the wood block.

Therefore, the rejection of claim 7 under 35 U.S.C. 103(a) is improper.

It is respectfully submitted that claims 1-8 define the invention over the prior art of record and are in condition for allowance, and notice to that effect is earnestly solicited. Should the Examiner believe further discussion regarding the above claim language would expedite prosecution they are invited to contact the undersigned at the number listed below.

Respectfully submitted:
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